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EXAMINER

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ART UNIT

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1612

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/30/08 has been entered.

Claims 10-17, 19, 20 and 22-31 are pending. New claims 24-31 are added. Claim 10 is amended.

Election/Restriction**37 CFR 1.141****Different inventions in one national application.**

Two or more independent and distinct inventions may not be claimed in one national application, except that more than one species of an invention, not to exceed a **reasonable number**, may be specifically claimed in

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different claims in one national application, provided the application also includes an allowable claim generic to all the claimed species and all the claims to species in excess of one are written in dependent form (§ 1.75) or otherwise include all the limitations of the generic claim.

37 CFR 1.146. Election of species

If an application contains claims directed to more than a reasonable number of species, the examiner may require restriction of the claims to not more than a reasonable number of species before taking further action in the application. Where an application includes claims directed to different embodiments or species that could fall within the scope of a generic claim, restriction between the species may be proper if the species are independent or distinct. However, 37 CFR 1.141 provides that an allowable generic claim may link a reasonable number of species embraced thereby.

Claims 10-17, 19, 20 and 22-31 generic to the following disclosed patentably distinct species:

The species are as follows:

- a) Thousands of compounds as sulfonylurea herbicide

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- b) Thousand of compounds as an alkylpolyglycoside and
- c) Unlimited number of compounds as one or more further active compounds (optional).

The species are independent or distinct because as disclosed the different species have mutually exclusive characteristics for each identified species. In addition, these species are not obvious variants of each other based on the current record.

For example sulfonylurea herbicides in claim 10 include thousand of compounds (see for example some of them disclosed in claims 11 and 22); alkylpolyglycoside also includes thousand of compounds (some disclosed in claim 23). When component (c) is present it can be **any active compound except aminophosphoric acids**. Sulfonylurea as in claim 11 contains Z which represents C or N which is chemically and structurally different. When Z is C, the hetero ring is pyrimidine, when Z is N, hetero ring is 1, 3, 5 triazine which are not obvious over the each other and are completely different in all features. In addition they have large number of different substituents. Similarly J in claim 22 represents large number of heterocyclic groups which are structurally and chemically different and are

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art recognized. Furthermore, a 5-membered ring is not the same as a pyridine ring. These are different species. Similarly 5-membered heterocyclic ring containing one nitrogen is not equivalent or obvious variant to a six-member heterocyclic ring containing one nitrogen. A pyrazole ring is not the same as pyridine ring. Sulfonylureas represent large number of different species.

Similarly alkylpolyglycoside contain large number of species. Further as component (3) it includes any active compounds which has no limit of species may contain millions of different species except one which is disclaimed.

Amended claim 10 is drawn to a solid mixture comprising a) a sulfonylurea herbicide, b) an alkylpolyglycoside, and c) optionally one or more further active compounds, with the proviso that said further active compound (c) is different from aminophosphoric acids.

Applicant is required, in reply to this action, to elect a single species of (1) a sulfonylurea herbicide (2) an alkylpolyglycoside and (3) if applicants

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elect the 3rd optional component in the elected invention then one active compound.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species as cited above for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.

Due to the complexity no call was made for election/restriction.

There is an examination and search burden for these patentably distinct species due to their mutually exclusive characteristics. The species require a different field of search (e.g., in various cases searching different classes/subclasses or electronic resources, or employing different search queries); and/or the prior art applicable to one species would not likely be applicable to another species; and/or the species are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species to be examined as cited above even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected species,

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including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

The election of the species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the election of species requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected species.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the species unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other species.

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Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

COMMUNICATION

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sabiha Qazi whose telephone number is (571) 272-0622. The examiner can normally be reached on any business day except Wednesday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Krass Frederick can be reached on (571) 272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sabiha Qazi/

Primary Examiner, Art Unit 1612